(1)

Supreme Court, U.S.
FILED

No. 01-1092 630 AUG 19 2002

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

Edward J. Barr, Petitioner

v.

State of Florida et al

On Petition for Writ of Certiorari
To the U.S. Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Edward J. Barr
HC 87 Box 792
Pocono Lake PA 18347
570-646-2114

35 pp

QUESTIONS PRESENTED

Does a 42 U.S.C. §1983 discrimination complaint require a standard of pleading in excess of Fed. R. Civ. P. (8)(a)(2)?

Should case law be applied retroactively?

PARTIES

Edward J. Barr, Petitioner
State of Florida
Office of the Governor
Florida Department of Transportation
Florida Bureau of Professional Regulation
Robert A. Butterfield
Elizabeth Baker
Paul Bechstein
Fred Celi
Tom Clemmons
Charles Coats
Tom Dierking
Charles M. Fahlbusch
Lisa Friedman
Deloris Perry
James R. Patton
Kathy Smith

CORPORATE DISCLOSURE STATEMENT

There is no known corporation involved

TABLE OF CONTENTS

	Page
Questions	i
Parties	ii
Corporate Disclosure Statement	ii
Citations Entered by the Courts	iii
Statement of Jurisdiction	iv
Notifications	iv
Statutory Provisions Involved	iv
Facts of the Case	1
Reasons for Granting the Petition	4

Appendix A AP–01
Appendix B AP–03
Appendix C AP–07
Appendix D AP–10
Appendix E AP–12
Appendix F AP–14
Appendix G AP–16
Appendix H AP–21
Appendix I AP–23

CITATIONS ENTERED BY THE COURTS

Cases – Appeals Court

. 42 USC §1981, §1983, and §2000(d)
. Federal Rule of Civil Procedure §8(a)(2)
. Federal Rule of Civil Procedure §12(b)(6)
. Federal Rule of Civil Procedure §61
. Harris v. Proctor & Gamble Cellulose Co., 73 F.3d 321, 324 (11th Cir. 1996)
. Roe v. Aware Woman Center for Choice, Inc., 253 F.3d 678, 683 (11th Cir. 2001), cert. denied, 122 S.Ct. 1067 (2002)
. Southeast Banking Corp., 69 F.3d 1539,1551 (11th Cir. 1995)
. Shads Teaching Hosp. & Clinics, Inc. v Beech St. Corp., 208 F.3d 1308,1310 (11th Cir. 2000)
. Swierkiewicz v. Sorema N.A. _ U.S. , 122 S.Ct. 992,997–99 (2002)

Cases – District Court:

. 28 U.S.C. §636(b)(1)(C)
. Federal Rule of Civil Procedure §8(a)(2)
. Conley v. Gibson, 355 U.S. 41, 47 (1957)
. U.S. v. Warren, 687 F.2d 347,348 (11th Cir. 1982) cert. denied, 460 U.S. 1087 (1983)

STATEMENT OF JURISDICTION

. Jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

. Jurisdiction of the Appeals Court was stated as 28 USC §1291, F.R.A.P. 1 and F.R.A.P. 2.

. Jurisdiction in the Court of First Instance was stated as 28 USC §1331 and §1343.

The judgment of the court of appeals was entered on 31 May 2002. A petition for a rehearing and a stay of the issuance of the mandate pending petition for writ of certiorari was denied on 17 July 2002. Judgment was issued as Mandate 25 July 2002.

NOTIFICATIONS

28 U.S.C. §2403(a) may apply in this instance. Accordingly a copy of this writ has been sent to Solicitor General of the United States, at Room 5614, Department of Justice, 950 Pennsylvania Ave. NW, Washington DC 20530–0001.

STATUTORY PROVISIONS INVOLVED

"Federal Rules of Pleading: Rule 8 General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third–party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) A short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different type may be demanded." Source: Rules of Civil Procedure for the United States District Courts by Thomas A. Coyne.

Published by Clark Boardman Co. Ltd. New York NY 1986
/ Release #4, 4/86

FACTS OF THE CASE

At a rate of two or more times per month, between the years 1992 thru 1998 Plaintiff repeatedly applied for employment with various State of Florida agencies and after four years of applying for and finding no employment, by way of the Florida Freedom of Information Act (FL–FOIA) Plaintiff began to initiate written inquiries as to the age, sex and ethnic background of those hired for positions for which Plaintiff applied and was not selected. Among others, and in their official capacity the named defendants were recipients of these FL–FOIA inquiries, of which a significant number were unlawfully ignored –– repeatedly and intentionally.

There is an affirmative, non–trivial, plausible connection between the Plaintiff, the named defendants and the State of Florida agencies as cited in the complaint. In every instance the publicly announced job vacancy broadcasts on which the Plaintiff reacted, each was very specific with regard as to where, by when and to whom a mandated and completed State of Florida job application form was to be addressed. During the time block in question, " – since the Spring of 1992 (see Complaint .0.5.0. Facts) each of the nine defendants were individuals to whom the Plaintiff sent completed State of Florida job application forms. Further, in the complaint each defendant was identified as being in the employ of the State of Florida and as applicable each was further identified by way of the "Personnel Department" office mailing address; i.e., the specific main, district or regional office of the State of Florida agency in which the defendant was employed at the time.

On oral inquiry in one instance, when asked as to

why he wasn't selected Plaintiff was advised that he was "... not qualified." The position in question paid less than nineteen thousand ($19,000) dollars a year, and at the time of application the Plaintiff was over forty years in age, a college graduate with a degree in Business Administration and a veteran of the U.S. Submarine Service. With the fact of repeated refusals to reply to the written FL–FOIA requests in mind, as well as the thought that discrimination based on age was being applied as part of the selection criteria utilized by the defendants, after almost six years of job vacancy applications and the refusals to hire, Plaintiff contacted EEOC regarding six positions for which he applied and was not selected and as anticipated EEOC got it wrong. EEOC did however issue a right to sue letter and on or about the date of 18 March 1999 Plaintiff filed an action in the 11th District of the U.S. Circuit.

In the complaint (see .0.1.0. Nature of the Action) Plaintiff specifically stated, (1) ". . . for violations . . . under the Fourteenth Amendment . . .", (2) "For Age Discrimination . . ." (mentioned twice) and (3) "For Retaliatory Action . . .". Plaintiff further identified and charged the defendants with violation of the Plaintiff's rights with regard to: 42 USC §1981, 42 USC § 1983, 42 USC §2000(d), 29 CFR §1625.6, 29 CFR §1625.7, and 29 CFR §1630.12. Yet, and citing Federal Rule of Civil Procedure §8(a)(2), from the outset defense has stated Plaintiff failed to state a claim.

Federal Rules of Civil Procedure §8(a) provides in pertinent part that a pleading shall contain: (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. On all three points Plaintiff's

complaint was right on the mark in that the grounds of the complaint were stated, Plaintiff further declared he was entitled to relief and a demand for judgment was made as well. "Failure of the complaint to set forth specific facts to support its general allegations of discrimination was not a sufficient ground for dismissal of the suit, since the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim." Conley v. Gibson et al 355 US 41 (1957); see also Leatherman v. Tarrant County NICU, 507 U.S. 163 (1993) ("Held: a federal court may not apply a "heightened pleading standard" – more stringent than the usual pleading requirements of Federal Rule of Civil Procedure 8(a) – in civil rights cases alleging municipal [State] liability under 1983." In his complaint Plaintiff expressly charged the defendants with age discrimination and with retaliation and in this day and age nothing what–so–ever is "unintelligible" or could be misunderstood about a statement which reads; "For Age Discrimination in violation of . . ." . We have at this point over a generation of experience with ADEA and Plaintiff suggests that a complaint which stipulates "Age Discrimination in violation of . . ." means exactly that. "Dismissal is usually reserved for those cases in which the complaint is so confused, vague or otherwise unintelligible that its true substance, if any, is well disguised." See Salahudden v. Cumo 861 F.2d 40,42 (2d Cir. 1988).

RETROACTIVE CASE LAW

Employing Swierkiewicz as a guide, the 11th Circuit has clearly misread the finding. Absent a clear statement to the contrary in Swierkiewicz, §1983 litigants in the 11th Circuit are it now appears required

to exceed the intentional (which is no accident) broad based pleading standard which is still to be found in Federal Rule of Civil Procedure 8(a)(2). Plaintiff respectfully suggests that the degree of specificity as cited in the Swierkiewicz finding is for all intents and purposes the ideal as opposed to the minimum a §1983 pleader may need to attain in order to avoid a dismissal "... for failure to state a claim."

REASONS FOR GRANTING THE PETITION

With regard to §1983 complaints and the heightened pleading standard which the lower courts clearly seem intent on with regard to these, it is the Plaintiff's belief that the findings in Leatherman were very specific in that heightened pleading standards were not to be allowed; "Perhaps if Rules 8 and 9 were rewritten today, claims against municipalities under 1983 might be subjected to the added specificity requirement of Rule 9(b). But that is a result which must be obtained by the process of amending the Federal Rules, and not by judicial interpretation. In absence of such an amendment, federal courts and litigants must rely on summary judgment and control of discovery (507 U.S. 163, 169) to weed out unmeritorious claims."

With retroactive application of case law in mind, research here suggests that there is a considerable presumption in the courts against retroactivity as "Retrospective laws are highly injurious, oppressive and unjust. No such laws, therefore, should be made, either for the decision of civil causes or the punishment of offenses." See Art. 23 of the New Hampshire Bill of Rights. Plaintiff further and respectfully suggests that "Retroactive imposition of . . . damages would raise a serious constitutional question and accordingly "The

Court would [may wish to] hesitate to approve the retrospective imposition of liability on any theory of deterrence . . . or blameworthiness". See Turner v. Elkhorn, 428 U.S., at 17.

With the above stated and in mind it is asked that the petition for a writ of certiorari be granted.

Respectfully submitted

Edward J. Barr
16 August 2002

APPENDIX–A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

Case No. 99–10035–CIV–MOORE

EDWARD J. BARR
Plaintiff,

ORDER

FILED BY ___
JUN 8 2000

vs.

STATE OF FLORIDA, et al.,
Defendants

THIS CAUSE came before this Court upon Defendant State of Florida's Motion to Dismiss (DE #34) and Plaintiff's Motion to Amend (DE #36).

THE MATTER was referred to the Honorable Ann E. Vitunac, United States Magistrate Judge. A Report and Recommendation has been filed, recommending that Defendant's Motion to Dismiss be granted and that Plaintiff's Motion to Amend be granted. (1)

Accordingly, after a de novo review of the record herein, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that United States Magistrate Judge Vitunac's Report and Recommendation be, and the same is, hereby ADOPTED in its entirety.

FURTHER ORDERED, and based thereon, as follows:

1. Defendant State of Florida's Motion to Dismiss is hereby GRANTED.

2. Plaintiff's Motion to Amend Complaint is hereby GRANTED.

DONE AND ORDERED in Chambers at Miami, Florida This 8th day of June, 2000

s/_____
K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Anne E. Vitunac
Lisa Friedman, AAG
Edward J. Barr, Pro Se

(1)Defendant State of Florida Filed an Objection to Magistrate Judge Vitunac's Report and Recommendation in which it averred that it had never received a copy of Plaintiff's Amended Complaint. Defendant requests that the Court deny Plaintiff's Motion to Amend Complaint on the grounds that the Complaint as amended, still fails to state a claim upon which relief may be granted. However, as no response pleading has yet been field in this action, Plaintiff is entitled to amend his Complaint once as a matter of right pursuant to Fed.R.Civ.P.15(a)

APPENDIX – B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 99–10035–Civ–Moore/Vitunac

Edward J. Barr
Plaintiff,

Filed By ____
00 SEP 11

vs.

State of Florida, et. al.,
Defendants

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on an Order of Referral (DE 14) from United States District Judge K. Michael Moore entered on July 9, 1999, instructing the Court to "take all necessary and proper actions as required by law with respect to ANY AND ALL PRETRIAL matters. " Before this Court is Defendants' Motion to Dismiss (Amended Complaint (DE 47) and Plaintiff's Motion to Quash Defendant's [sic] Motion to Dismiss (DE 48).

This Court RECOMMENDS that Defendant's Motion to Dismiss (DE 47) be GRANTED and that Plaintiff's Motion to Quash Defendant's Motion to Dismiss (DE 48) be DENIED.

BACKGROUND

On March 23, 1999, Plaintiff filed his initial complaint (DE 11), alleging, inter allia age

discrimination, violation of equal protection pursuant to the Fourteenth Amendment and Retaliatory Action. On January 21, 2000, defendant State of Florida filed a Motion to Dismiss Complaint (DE 34). On February 2, 2000, Plaintiff filed a Motion to Amend Complaint (DE 36). On March 6, 2000, Plaintiff filed a amended complaint (DE 40). The amended complaint is identical to the initial complaint in all respects except that the amended complaint identifies "Thomas Dierking" as "Tom Dierking" and Thomas Clemons" as "Tom Clemons." The allegations in the amended complaint are identical to those made in the initial complaint.

On March 7, 2000, this Court entered a Report and Recommendation (DE 41) which recommended that Plaintiff's initial complaint be dismissed. However, this Court also recommended that Plaintiff be permitted to amend his complaint. On June 8, 2000, the District Court entered an Order (DE 46) adopting this Court's Report and Recommendation, dismissing Plaintiff's complaint, and granting Plaintiff's Motion to Amend Complaint.

On June 21, 2000, Defendants filed the pending Motion to Dismiss. In response, Plaintiff filed a pleading titled Motion to Quash Defendant's Motion to Dismiss. Defendants filed a Response to Plaintiff's Motion to Quash Defendants' Motion to Dismiss.

Plaintiff's Motion to Quash respond to the substance of Defendant's Motion to Dismiss rather than setting forth grounds for "quashing" Defendant's Motion to Dismiss. In fact, the requested relief in Plaintiff's Motion to Quash is that this Court deny Defendant's pending motion to dismiss. Accordingly,

this Court will consider Plaintiff's Motion to Quash to be a response to Defendant's Motion to Dismiss.

DISCUSSION

Defendants again move to dismiss Plaintiff's amended complaint on same grounds identified in their prior motion to dismiss noting that the amended complaint is identical in substance to the initial complaint which this Court recommended to be dismissed.

Federal Rule of Civil Procedure 8(a)(2) requires a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." A Plaintiff must provide a statement that "will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41,47(1957).

Plaintiff's amended complaint contains no substantive changes from his initial complaint which would permit this Court to find that Plaintiff has stated a cause of action. Plaintiff's amended complaint fails to allege facts sufficient to serve notice upon Defendant of the nature of his claims. Plaintiff merely makes conclusory statements, such as, "Defendants discriminated against plaintiff on the basis of age," and "defendants acted under color of law to deny Plaintiff equal protection of the laws." Plaintiff does not allege even the most basic facts upon which Defendant could recognize the circumstances underlying his claim and investigate them in defense. For example, Plaintiff never states when and to whom he applied for jobs with Defendant nor why he was allegedly denied

employment. The conclusory statements presented by Plaintiff make it impossible for Defendant to assert any defense against Plaintiff's amended Complaint. Accordingly, this Court finds that Plaintiff has failed to state a cause of action in his amended complaint.

RECOMMENDATION

For the reasons stated above, this Court RECOMMENDS that Defendant's Motion to Dismiss (DE 47) be GRANTED and that Plaintiff's Motion to Quash Defendants' Motion to Dismiss (DE 48) be DENIED.

Any party may serve and file written objections to this Report and Recommendation with the Honorable K. Michael Moore, within ten (10) days after its receipt. See 28 U.S.C. § 636(b)(1)(C). Failure to file timely objections may limit the scope of appellate review of factual findings contained herein. See U.S. v. Warren 687 F.2d 347,348 (11th Cir. 1982) cert. denied, 460 U.S. 1087 (1983).

DONE and RECOMMENDED in Chambers at West Palm Beach in the Northern Division of the Southern District of Florida, this 11 day of September, 2000.

/s_____
ANNE E. VITUNAC
United States Magistrate Judge

APPENDIX – C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
US COURT OF APPEALS
ELEVENTH CIRCUIT
JUL 25 2001

No. 01–12962–DD

EDWARD J. BARR,
Plaintiff–appellant,
versus

STATE OF FLORIDA, Office of the Governor, Florida Department of Transportation, Florida Bureau of Professional Regulation, Elizabeth Baker, Paul Bechstein

Defendants–Appellees

Appeal from the United States District Court for the Southern District of Florida

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ENTRY OF DISMISSAL

Pursuant to 11th Cir.R.42–2(c), this appeal is hereby dismissed for want of prosecution because appellant has failed to file an appellant's brief and record excerpts within the time fixed by the rules, effective

this 25th day of July, 2001.

THOMAS K. KAHN
Clerk of the United States Court
of Appeals for the Eleventh Circuit

By: Nicole Jones
Deputy Clerk

FOR THE COURT – BY DIRECTION

ORD–40

APPENDIX–D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
US COURT OF APPEALS
ELEVENTH CIRCUIT
NOV 21 2001

NO. 01–12962–DD

EDWARD J. BARR,
Plaintiff–Appellant,

versus

STATE OF FLORIDA,
Office of the Governor.
FLORIDA DEPARTMENT OF TRANSPORTATION,
FLORIDA BUREAU OF PROFESSIONAL
REGULATION,
ELIZABETH BAKER,
PAUL BECHSTEIN, et al.,
Defendants–Appellees

Appeal from the United States District Court for the
Southern District of Florida

Before TJOFLAT and BIRCH, Circuit Judges

BY THE COURT:

Appellant's motion for leave to reinstate the appeal is (BLANK/INCOMPLETE SENTENCE HERE)

/s "GRAUHL"(?)

APPENDIX – E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
US COURT OF APPEALS
ELEVENTH CIRCUIT
MAR 05 2002

No. 01–12962–DD

EDWARD J. BARR

Plaintiff–Appellant,

versus

STATE OF FLORIDA,
Office of the Governor,
FLORIDA DEPARTMENT OF TRANSPORTATION,
et al.,

Defendants–Appeals

Appeal from the United States District Court for the
Southern District of Florida

Before TJOFLAT, BIRCH and DUBINA, Circuit Judges.

BY THE COURT:

The appeal from the February 16, 2001, final order MAY PROCEED. Because the district court failed to enter a separate judgment pursuant to Fed R. Civ.P. 58, the May 22, 2001, notice of appeal is not untimely.

See Fed.R.App.P. 4(a)(7); Fed.R.Civ.P. 58; Leal v. Georgia Dep't Of Corrections, 254 F.3d 1276, 1277–78 (11th Cir. 2001); Reynolds v. Golden Corral, 213 F.3d 1344,1346–47 (11th Cir. 2000).

APPENDIX – F

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
US COURT OF APPEALS
ELEVENTH CIRCUIT
May 31, 2002

No. 01–12962–DD

EDWARD J. BARR

Plaintiff–Appellant,

versus

STATE OF FLORIDA,
Office of the Governor,
florida department of transportation,
et al.,

Defendants–Appellees

Appeal from the United States District Court for the
for the Southern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attachment opinion included herein by reference, is entered as the judgment of this Court.

ISSUED AS MANDATE JUL 25 2002
U.S. COURT OF APPEALS
ATLANTA GA

Entered: May 31, 2002
For the Court: Thomas K. Kahn, Clerk
by: Eggleston, Nataki

APPENDIX – G

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
US COURT OF APPEALS
ELEVENTH CIRCUIT
MAY 31 2002

No. 01–12962
Non–Argument Calendar

D.C. Docket No. 99–1035–CV–KMM

EDWARD J. BARR,

Plaintiff–Appellant,

versus

STATE OF FLORIDA,
Office of the Governor,
FLORIDA DEPARTMENT OF TRANSPORTATION,
et al.,

Defendant–Appellees.

Appeal from the United States District Court for the
Southern District of Florida

(May 31, 2002)

Before BLACK, HULL, and MARCUS, Circuit Judges.

PER CURIAM:

Edward J. Barr appeals the district court's dismissal of his pro se age discrimination action, asserting violations of 42 U.S.C. §§ 1981, 1983, 200d et seq., filed against the State of Florida ("State"), Thomas Clemons, Director, Division of Administration for the State, Thomas Dierking, Chief of Personnel Services, Division of Administration for the State, and other state officials. The district court dismissed Barr's amended complaint for failure to provide a short and plain statement of the claim showing that the pleader is entitled to relief, pursuant of Federal Rule of Civil Procedure 8(a)(2).

On appeal, Barr argues, inter alia, that the federal rules do not require him to provide detailed facts in his complaint to support allegations of discrimination. Barr argues that he in fact exceed the standard of giving the defendants "fair notice" of his claims and the grounds upon which they rest by including the defendant's full names, the agency that employed them, and the addressees of the branch or agency office. After review, we conclude that Barr's complaint does not meet the standards of Rule 8 and was properly dismissed. (1)

Before a court may dismiss a claim under Federal Rule of Civil Procedure (12(b)(6), it must

(2)This Court reviews de no a district court's order granting a motion to dismiss for failure to state a claim, accepting the allegation in the complaint as true and construing them in the light most favorable to the Plaintiff". Shands Teaching Hosp. & Clinics, Inc. v. Beech St. Corp., 208 F.3d 1308, 1310

(11th Cir. 2000)

appear "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.", in re Southeast Banking Corp., 69 F.3d 1539, 1551 (11th Cir. 1995). "A pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed R.Civ.P.8(a)(2). All Rule 8(a) requires "is a short and plain statement of the claim' that will give the defendant fair notice of what the Plaintiff's claim is and the grounds upon which it rests." Swierkiewicz v. Sorema N.A., ___ U.S. ___ 122 S.Ct. 992, 997–99; see also Harris v. Proctor & Gamble Cellulose Co., 73 F.3d 321, 324 (11th Cir. 1996) (holding that pleading will survive a motion to dismiss if the short and plain statement gives the defendant fair notice of the claim and the ground upon which it rests).

In Swierkiewicz, the Supreme Court recently resolved a circuit conflict and made clear that complaints in employment discrimination action are not subject to a heightened pleading standard. Swierkiewicz, 122 S.Ct. At 998. In particular, the Court held that the specific facts that establish a prima facie case of employment discrimination under the McDonnell Douglas framework need not be pled in the complaint under the liberal "notice pleading" standard of Rule 8. Id. A 997–99. The Court further held that the Plaintiff's complaint in Scwierkewicz satisfied Rule 8, noting that it "detailed the events leading to the Plaintiff's] termination, provided relevant dates, and included the ages and nationalities of at least some of the relevant persons involved in his termination." Id. At 999.

Our Circuit precedent is consistent with this holding. We have held in other types of civil cases that the notice pleading standards in Rule 8(a) does not require a specific fact for every element, but a complaint should "contain either direct or inferential allegations respecting all material elements necessary to sustain a recovery under some viable legal theory." Roe v. Aware Woman Center for Choice, Inc. 253 F.3d 678,683 (11th Cir. 2001), cert. Denied. 122 S.Ct. 1067(2002)

Barr's complaint gives the names and addresses of Florida state agencies where he submitted applications for employment. However, unlike the complaint in Swierkiewicz, Barr's complaint does not detail the positions applied for or the date of his application, and does not include the ages of at least some of the relevant persons that were hired in place of Barr. See Swierkiewicz, 122 S. Ct. at 999. Barr's complaint despite his having been given an opportunity to amend, contains only conclusory statements that he was discriminated against and does not state when and to whom he applied or why he was denied employment. Such conclusory allegations did not give the defendants fair notice of the grounds upon which Barr's claims rested. Therefore, the district court did not err in granting the motion to dismiss. Consequently, we reject Barr's additional argument on appeal that the district court erred in denying as moot his motion for the production of records.

Additionally, Barr contends that the district court erred because it failed to notify him of the order dismissing his case, and that he discovered the dismissal five and one–half months after the fact. The

district court's failure to notify Barr of the order to dismiss his case is not a reason to disturb the judgment. A prior panel of this Court ordered that Barr's appeal was not untimely and could proceed despite the fact that Barr's notice of appeal was filed eight months after the district court's order. Thus, any error in untimely notification did not affect Barr's appeal rights and is harmless. See Fed. R. Civ. P. 61 (stating that the court must disregard any error that does not affect the substantial rights of the parties).

AFFIRMED.

APPENDIX – H

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUL 05 2002

No. 01–12962–DD

EDWARD J. BARR,

Plaintiff–Appellant,

versus

STATE OF FLORIDA,
Office of the Governor,
FLORIDA DEPARTMENT OF TRANSPORTATION,
FLORIDA BUREAU OF PROFESSIONAL
REGULATION,
ELIZABETH BAKER,
PAUL BECHSTEIN, et al.,

Defendants–Appellees

On Appeal from the United States District Court for the
Southern District of Florida

BEFORE: BLACK, HULL, and MARCUS, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellant Edward Barr is DENIED.

ENTERED FOR THE COURT:

/s/ FRANK M HULL
UNITED STATES CIRCUIT JUDGE

ORD–41

APPENDIX – I

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUN 17 2002

No. 01–12962–DD

EDWARD J. BARR,

Plaintiff–Appellant,

versus

STATE OF FLORIDA,
Office of the Governor,
FLORIDA DEPARTMENT OF TRANSPORTATION,
FLORIDA BUREAU OF PROFESSIONAL
REGULATION,
ELIZABETH BAKER,
PAUL BECHSTEIN, et al.,

Defendants–Appellees.

On Appeal from the United States District Court for the
Southern District of Florida

ORDER:

(X) The motion of Appellant, Edward Barr, for petition for rehearing and (X) stay of the issuance of the mandate pending petition for writ of certiorari is

DENIED.

( ) The motion of Appellant, Edward Barr, for (X) stay (_) recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including _____, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time

/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE

ORD–45